

AMENDED IN ASSEMBLY JULY 15, 2009

AMENDED IN SENATE MAY 6, 2009

AMENDED IN SENATE APRIL 23, 2009

SENATE BILL

No. 726

Introduced by Senator Ashburn

(Principal coauthors: Assembly Members Chesbro and Swanson)

February 27, 2009

An act to amend Sections 2401 and 2401.1 of the Business and Professions Code, relating to medicine.

LEGISLATIVE COUNSEL'S DIGEST

SB 726, as amended, Ashburn. ~~District~~ *Health care districts: rural hospitals: employment of physicians and surgeons.*

Existing law, the Medical Practice Act, restricts the employment of licensed physicians and surgeons and podiatrists by a corporation or other artificial legal entity, subject to specified exemptions. Existing law establishes, until January 1, 2011, a pilot project to allow qualified district hospitals to employ a physician and surgeon if certain conditions are satisfied. ~~Existing law defines a qualified district hospital as a district hospital that provides a certain percentage of care to Medicare, Medi-Cal, and uninsured patients, that is located in a county with a certain population, and that has net losses from operations in a specified fiscal year.~~ The pilot project authorizes the direct employment of a total of 20 physicians and surgeons by those hospitals, and specifies that each qualified district hospital may employ up to 2 physicians and surgeons, subject to certain requirements. The pilot project requires that the term of a contract with a licensee not exceed 4 years. Existing law

requires the Medical Board of California to report to the Legislature not later than October 1, 2008, on the effectiveness of the pilot project.

This bill would revise the pilot project to authorize the direct employment by qualified ~~district health care districts and qualified rural hospitals, as defined,~~ of an unlimited number of physicians and surgeons under the pilot project, and would authorize such a *district or* hospital to employ up to 5 ~~licensees~~ *physicians and surgeons* at a time if certain requirements are met. ~~The bill would revise the definition of a qualified district hospital to a hospital that, among other things, is operated by the district itself and is either a small and rural hospital, as defined, or is located within a medically underserved area, as specified. The bill would further revise the pilot project to authorize a qualified district hospital to directly employ a physician and surgeon specializing in family practice, internal medicine, general surgery, or obstetrics and gynecology, and would authorize the hospital to request permission from the board to employ a physician and surgeon specializing in a different field if certain requirements are met. The bill would require that the term of a contract with a licensee~~ *physician and surgeon* not exceed 10 years. ~~The bill and~~ would extend the pilot project until January 1, 2018. The bill would require the board to provide a preliminary report to the Legislature not later than July 1, 2013, and a final report not later than July 1, 2016, evaluating the effectiveness of the pilot project, and would make conforming changes.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 2401 of the Business and Professions
- 2 Code is amended to read:
- 3 2401. (a) Notwithstanding Section 2400, a clinic operated
- 4 primarily for the purpose of medical education by a public or
- 5 private nonprofit university medical school, which is approved by
- 6 the Division of Licensing or the Osteopathic Medical Board of
- 7 California, may charge for professional services rendered to
- 8 teaching patients by licensees who hold academic appointments
- 9 on the faculty of the university, if the charges are approved by the
- 10 physician and surgeon in whose name the charges are made.
- 11 (b) Notwithstanding Section 2400, a clinic operated under
- 12 subdivision (p) of Section 1206 of the Health and Safety Code

1 may employ licensees and charge for professional services rendered
2 by those licensees. However, the clinic shall not interfere with,
3 control, or otherwise direct the professional judgment of a
4 physician and surgeon in a manner prohibited by Section 2400 or
5 any other provision of law.

6 (c) Notwithstanding Section 2400, a narcotic treatment program
7 operated under Section 11876 of the Health and Safety Code and
8 regulated by the State Department of Alcohol and Drug Programs,
9 may employ licensees and charge for professional services rendered
10 by those licensees. However, the narcotic treatment program shall
11 not interfere with, control, or otherwise direct the professional
12 judgment of a physician and surgeon in a manner prohibited by
13 Section 2400 or any other provision of law.

14 (d) Notwithstanding Section 2400, a ~~qualified hospital-owned~~
15 ~~and operated by a health care district~~ *health care district organized*
16 *and governed* pursuant to Division 23 (commencing with Section
17 32000) of the Health and Safety Code *or a qualified rural hospital*
18 may employ a licensee pursuant to Section 2401.1, and may charge
19 for professional services rendered by the licensee, if the physician
20 and surgeon in whose name the charges are made approves the
21 charges. However, the *district or* hospital shall not interfere with,
22 control, or otherwise direct the physician and surgeon's
23 professional judgment in a manner prohibited by Section 2400 or
24 any other provision of law.

25 SEC. 2. Section 2401.1 of the Business and Professions Code
26 is amended to read:

27 2401.1. (a) The Legislature finds and declares as follows:

28 (1) Due to the large number of uninsured and underinsured
29 Californians, a number of California communities are having great
30 difficulty recruiting and retaining physicians and surgeons.

31 (2) In order to recruit physicians and surgeons to provide
32 medically necessary services in rural and medically underserved
33 communities, many ~~district~~ *qualified health care districts and*
34 *qualified rural* hospitals have no viable alternative but to directly
35 employ physicians and surgeons in order to provide economic
36 security adequate for a physician and surgeon to relocate and reside
37 in their communities.

38 (3) The Legislature intends that a ~~district~~ *qualified health care*
39 *district or qualified rural* hospital meeting the conditions set forth

1 in this section be able to employ physicians and surgeons directly,
2 and to charge for their professional services.

3 (4) The Legislature reaffirms that Section 2400 provides an
4 increasingly important protection for patients and physicians and
5 surgeons from inappropriate intrusions into the practice of
6 medicine, and further intends that a ~~district~~ *qualified health care*
7 *district or qualified rural* hospital not interfere with, control, or
8 otherwise direct a physician and surgeon's professional judgment.

9 (b) A pilot project to provide for the direct employment of
10 physicians and surgeons by ~~qualified-district health care districts~~
11 *and qualified rural* hospitals is hereby established in order to
12 improve the recruitment and retention of physicians and surgeons
13 in rural and other medically underserved areas.

14 (c) For purposes of this section, ~~a qualified-district hospital~~
15 ~~means a hospital that meets all of the following requirements:~~

16 ~~(1) Is a district hospital organized and governed pursuant to~~
17 *"qualified health care district" means a health care district*
18 *organized and governed pursuant to the Local Health Care District*
19 *Law (Division 23 (commencing with Section 32000) of the Health*
20 *and Safety Code). A qualified health care district shall be eligible*
21 *to employ physicians and surgeons pursuant to this section if all*
22 *of the following requirements are met:*

23 (1) *The district health care facility at which the physician and*
24 *surgeon will provide services meets both of the following*
25 *requirements:*

26 (2)

27 (A) *Is operated by the district itself, and not by another entity.*

28 (3)

29 (B) *Is located within a medically underserved population or*
30 *medically underserved area, so designated by the federal*
31 *government pursuant to Section 254b or 254c-14 of Title 42 of*
32 *the United States Code, or is a small and rural hospital as defined*
33 *in Section 124840 of the Health and Safety Code. within a federally*
34 *designated Health Professional Shortage Area.*

35 (4) (A) ~~The chief executive officer of the hospital has provided~~
36 ~~certification to the board and the medical staff that the hospital~~
37 ~~has been unsuccessful, using commercially reasonable efforts, in~~
38 ~~recruiting a core physician and surgeon for at least 12 consecutive~~
39 ~~months during the period beginning on July 1, 2008, and ending~~
40 ~~on July 1, 2009.~~

1 (2) *The chief executive officer of the district has provided*
2 *certification to the board that the district has been unsuccessful,*
3 *using commercially reasonable efforts, in recruiting a physician*
4 *and surgeon to provide services at the facility described in*
5 *paragraph (1) for at least 12 continuous months beginning on or*
6 *after July 1, 2008. This certification shall specify the commercially*
7 *reasonable efforts, including, but not limited to, recruitment*
8 *payments or other incentives, used to recruit a core physician and*
9 *surgeon that were unsuccessful and shall specify the reason for*
10 *the lack of success, if known.*

11 ~~(B) For purposes of this paragraph, “core physician and surgeon”~~
12 ~~means a physician and surgeon specializing in family practice,~~
13 ~~internal medicine, general surgery, or obstetrics and gynecology.~~

14 ~~(C) Notwithstanding subparagraph (A), a hospital may request~~
15 ~~permission from the board to hire a physician and surgeon in a~~
16 ~~specialized field other than the fields listed in subparagraph (B) if~~
17 ~~all of the following requirements are met:~~

18 ~~(i) The hospital can demonstrate a pervasive inability to meet~~
19 ~~the needs of the health care district in that specialized field.~~

20 ~~(ii) The chief medical officer of the hospital provides the~~
21 ~~certification described in subparagraph (A) regarding the hospital’s~~
22 ~~efforts to recruit a physician and surgeon in the specialized field~~
23 ~~during the period of time specified in subparagraph (A).~~

24 ~~(iii) The other applicable requirements of this subdivision are~~
25 ~~satisfied.~~

26 ~~(5) Except as provided in subparagraph (B) of paragraph (7),~~
27 ~~the medical staff and the elected trustees of the hospital concur by~~
28 ~~an affirmative vote of each body that the physician and surgeon’s~~
29 ~~employment is in the best interest of the communities served by~~
30 ~~the hospital.~~

31 (3) *The chief executive officer of the district certifies to the*
32 *board that the hiring of a physician and surgeon pursuant to this*
33 *section shall not supplant physicians and surgeons with current*
34 *privileges or contracts with the facility described in paragraph*
35 *(1).*

36 ~~(6) The hospital~~

37 (4) *The district enters into or renews a written employment*
38 *contract with the physician and surgeon prior to December 31,*
39 *2017, for a term not in excess of 10 years. The contract shall*
40 *provide for mandatory dispute resolution under the auspices of the*

1 board for disputes directly relating to the licensee's *physician and*
2 *surgeon's* clinical practice.

3 ~~(7) (A) Except as provided in subparagraph (B), the total~~
4 ~~number of licensees employed by the hospital does not exceed two~~
5 ~~at any time.~~

6 ~~(B) The board shall authorize the hospital to hire no more than~~
7 ~~three additional licensees if both of the following requirements~~
8 ~~are met:~~

9 ~~(i) The hospital makes a showing of clear need in the community~~

10 ~~(5) The total number of physicians and surgeons employed by~~
11 ~~the district does not exceed two at any time. However, the board~~
12 ~~shall authorize the district to hire no more than three additional~~
13 ~~physicians and surgeons if the district makes a showing of clear~~
14 ~~need in the community following a public hearing duly noticed to~~
15 ~~all interested parties, including, but not limited to, those involved~~
16 ~~in the delivery of medical care.~~

17 ~~(ii) The medical staff concurs by an affirmative vote that~~
18 ~~employment of the additional licensee or licensees is in the best~~
19 ~~interest of the communities served by the hospital.~~

20 ~~(8) The hospital~~

21 ~~(6) The district notifies the board in writing that the hospital~~
22 ~~district plans to enter into a written contract with the licensee~~
23 ~~physician and surgeon, and the board has confirmed that the~~
24 ~~licensee's physician and surgeon's employment is within the~~
25 ~~maximum number permitted by this section. The board shall~~
26 ~~provide written confirmation to the hospital district within five~~
27 ~~working days of receipt of the written notification to the board.~~

28 ~~(7) The chief executive officer of the district certifies to the~~
29 ~~board that the district did not actively recruit or employ a physician~~
30 ~~and surgeon who, at the time, was employed by a federally~~
31 ~~qualified health center, a rural health center, or other community~~
32 ~~clinic not affiliated with the district.~~

33 ~~(d) (1) For purposes of this section, "qualified rural hospital"~~
34 ~~means any of the following:~~

35 ~~(A) A general acute care hospital located in an area designated~~
36 ~~as nonurban by the United States Census Bureau.~~

37 ~~(B) A general acute care hospital located in a rural-urban~~
38 ~~commuting area code of four or greater as designated by the~~
39 ~~United States Department of Agriculture.~~

1 (C) A rural hospital located within a medically underserved
2 population or medically underserved area, so designated by the
3 federal government pursuant to Section 254b or 254c-14 of Title
4 42 of the United States Code, or within a federally designated
5 Health Professional Shortage Area.

6 (2) To be eligible to employ physicians and surgeons pursuant
7 to this section, a qualified rural hospital shall meet all of the
8 following requirements:

9 (A) The chief executive officer of the hospital has provided
10 certification to the board that the hospital has been unsuccessful,
11 using commercially reasonable efforts, in recruiting a physician
12 and surgeon for at least 12 continuous months beginning on or
13 after July 1, 2008. This certification shall specify the commercially
14 reasonable efforts, including, but not limited to, recruitment
15 payments or other incentives, used to recruit a physician and
16 surgeon that were unsuccessful and shall specify the reason for
17 the lack of success, if known.

18 (B) The chief executive officer of the hospital certifies to the
19 board that the hiring of a physician and surgeon pursuant to this
20 section shall not supplant physicians and surgeons with current
21 privileges or contracts with the hospital.

22 (C) The hospital enters into or renews a written employment
23 contract with the physician and surgeon prior to December 31,
24 2017, for a term not in excess of 10 years. The contract shall
25 provide for mandatory dispute resolution under the auspices of
26 the board for disputes directly relating to the physician and
27 surgeon's clinical practice.

28 (D) The total number of physicians and surgeons employed by
29 the hospital does not exceed two at any time. However, the board
30 shall authorize the hospital to hire no more than three additional
31 physicians and surgeons if the hospital makes a showing of clear
32 need in the community following a public hearing duly noticed to
33 all interested parties, including, but not limited to, those involved
34 in the delivery of medical care.

35 (E) The hospital notifies the board in writing that the hospital
36 plans to enter into a written contract with the physician and
37 surgeon, and the board has confirmed that the physician's and
38 surgeon's employment is within the maximum number permitted
39 by this section. The board shall provide written confirmation to

1 *the hospital within five working days of receipt of the written*
2 *notification to the board.*

3 *(F) The chief executive officer of the hospital certifies to the*
4 *board that the hospital did not actively recruit or employ a*
5 *physician and surgeon who, at the time, was employed by a*
6 *federally qualified health center, a rural health center, or other*
7 *community clinic not affiliated with the hospital.*

8 ~~(d)~~

9 *(e) The board shall provide a preliminary report to the*
10 *Legislature not later than July 1, 2013, and a final report not later*
11 *than July 1, 2016, evaluating the effectiveness of the pilot project*
12 *in improving access to health care in rural and medically*
13 *underserved areas and the project's impact on consumer protection*
14 *as it relates to intrusions into the practice of medicine. The board*
15 *shall include in the report an analysis of the impact of the pilot*
16 *project on the ability of nonprofit community clinics and health*
17 *centers located in close proximity to participating health care*
18 *district facilities and participating rural hospitals to recruit and*
19 *retain physicians and surgeons.*

20 ~~(e)~~

21 *(f) Nothing in this section shall exempt the district a qualified*
22 *health care district or qualified rural hospital from any reporting*
23 *requirements or affect the board's authority to take action against*
24 *a physician and surgeon's license.*

25 ~~(f)~~

26 *(g) This section shall remain in effect only until January 1, 2018,*
27 *and as of that date is repealed, unless a later enacted statute that*
28 *is enacted before January 1, 2018, deletes or extends that date.*